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Aylus Networks, Inc.

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA

15 AYLUS NETWORKS, INC., a Delaware
corporation,

17 Plaintiff,

18 vs.

19 APPLE INC., a California corporation

20 Defendant.

CASE NO. 3:13-cv-04700-EMC

**AYLUS' OPPOSITION TO APPLE'S
MOTION TO STRIKE UNDISCLOSED
DOCUMENTS IN SUPPORT OF AYLUS'S
REPLY CLAIM CONSTRUCTION BRIEF**

1 **I. INTRODUCTION**

2 On October 9, 2014, Apple initiated a series of procedural motions when it filed a motion
3 to strike the declaration of Dr. Daniel J. Wigdor. Dkt. No. 65 (“Apple Wigdor Motion Number
4 One”). Apple claimed that Dr. Wigdor’s declaration should be excluded from consideration in
5 claim construction because it was not listed on the Joint Claim Construction Statement. *Id.* at 1.
6 As Aylus explained in its opposition to that motion, Dr. Wigdor’s declaration was submitted *in*
7 *response* to numerous pieces of evidence that Apple included in its claim construction briefing
8 that were not on the Joint Claim Construction Statement—including the declaration of Mr. Sho
9 Kou. *See* Dkt. No. 75. Thus, despite being the party that violated the Patent Local Rules, it was
10 Apple that burdened the Court by initiating this briefing.

11 Making matters worse, Apple Wigdor Motion Number One completely omitted any
12 mention of the exhibits attached to Dr. Wigdor’s declaration. In response to Aylus’ Motion to
13 Strike Apple’s Non-Disclosed Claim Construction Evidence (Dkt. No. 67) (“Aylus’ Motion to
14 Strike”), Apple has filed an entirely new motion—sweeping in the exhibits to the very same
15 Wigdor declaration. Dkt. No. 69 (“Apple Wigdor Motion Number Two”).

16 For the very same reasons articulated in Aylus’ opposition to Apple Wigdor Motion
17 Number One, the Court should reject Apple Wigdor Motion Number Two: Dr. Wigdor’s
18 declaration and exhibits thereto were submitted in response to Apple’s own preceding violations
19 of Patent L.R. 4-3. *See* Dkt. No. 75. As Aylus previously stated, if the Court grants the relief
20 requested in Aylus’ Motion to Strike then Aylus does not object to the Court striking the exhibits
21 to Dr. Wigdor’s declaration. *See id.* at 1-2. If, however, the Court does not strike the evidence
22 requested in Aylus’ Motion to Strike, the documents at issue in this motion should not be stricken.

23 **II. THE DOCUMENTS AT ISSUE IN THIS MOTION WERE SUBMITTED IN**
24 **REBUTTAL TO APPLE’S NON-DISCLOSED EXTRINSIC EVIDENCE**

25 On July 17, 2014 and July 28, 2014, Apple and Aylus exchanged Patent L.R. 4-2 and 4-3
26 disclosures. Ex. A; Ex. B. The Patent Local Rules require these disclosures to identify “any
27 extrinsic evidence known to the party on which it intends to rely either to support its proposed
28 construction or to oppose any other party’s proposed construction . . .” Patent L.R. 4-3; *see*

1 Patent L.R. 4-2. Aylus submitted its Opening Claim Construction Brief (“Opening Brief”) on
2 September 11, 2014 in full compliance with the Patent Local Rules, i.e., it did not include the
3 evidence at issue in Apple’s instant motion. *See* Dkt. No. 54. On September 25, 2014, Apple
4 filed its Responsive Claim Construction Brief (“Responsive Brief”) along with supporting
5 declarations and exhibits. *See* Dkt. Nos. 55-58. Apple’s Responsive Brief included several
6 pieces of evidence not listed in the Joint Claim Construction Statement. *See, e.g.*, Dkt. No. 55 at
7 1 (RenderingControl: 1 Service Template Version 1.01), 3 (Universal Plug and Play Standards -
8 Archive.org); Dkt. No. 57 (Kou Declaration); Dkt. No. 58 at 8 (IP Multimedia Subsystem), 8
9 (Bertrand, “The IP Multimedia Subsystem in Next Generation Networks”). This non-disclosed
10 evidence related exclusively to (i) Universal Plug and Play and (ii) IP Multimedia Subsystem.

11 Aylus thereafter filed its Reply Claim Construction Brief (“Reply Brief”) on October 2,
12 2014. Dkt. No. 62. This brief contained, among other things, the evidence at issue in this
13 motion. *See id.* Every piece of evidence at issue in this motion was used to rebut Apple’s non-
14 disclosed evidence and related exclusively to (i) Universal Plug and Play or (ii) IP Multimedia
15 Subsystem. Apple cannot be heard to complain about Aylus’ use of evidence not listed in the
16 Joint Claim Construction Statement in order to respond to evidence Apple also did not list in the
17 Joint Claim Construction Statement. In other words, Apple attempts to expand the scope of claim
18 construction evidence outside of the Joint Claim Construction Statement and yet, at the same time,
19 seeks to strike Aylus’ use of evidence outside of the Joint Claim Construction Statement in
20 response. If the Court grants Aylus’ motion striking the evidence Apple did not list in the Joint
21 Claim Construction Statement, then Aylus will not oppose the Court striking the evidence at issue
22 in this motion. If, however, the Court denies Aylus’ motion, the Court should deny the instant
23 motion as well.

24 **III. CONCLUSION**

25 For the foregoing reasons, Aylus respectfully requests that the Court deny Apple’s Motion
26 to Strike Undisclosed Documents in Support of Aylus’s Reply Claim Construction Brief. If,
27 however, the Court grants the relief sought in Aylus’ Motion to Strike Apple’s Non-Disclosed
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1 Claim Construction Evidence (Dkt. No. 67) then Aylus does not object to the Court also striking
2 the evidence at issue in this motion.

3
4 DATED: October 16, 2014

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